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SUPREME COURT, U.S.

80-767

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No.

UNITED STATES OF AMERICA, APPELLANT

v.

EDWIN D. LEE

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Edwin D. Lee, appellee, respectfully moves the Court for leave to proceed herein in forma pauperis, in accordance with the provisions of Title 28, United States Code, Section 1915, and file a Motion to Affirm in response to the Jurisdictional Statement filed by the United States of America, in single counterpart, without printing the same. The typed Motion to Affirm Judgment is presented herewith for filing.

The Affidavit of Edwin D. Lee, appellee, in support of this motion is filed herewith.

Respectfully submitted,

CAIAZZA & LAMANCUSA

By Francis X. Caiazza

Francis X. Caiazza, Esquire
302 Central Building
New Castle, PA 16101
Telephone (412) 658-3758
Attorney for Appellee

CAIAZZA & LAMANCUSA
LAW OFFICES
SUITE 302
CENTRAL BUILDING
NEW CASTLE, PA. 16101

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AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA (
:
COUNTY OF LAWRENCE)

Edwin D. Lee, being duly sworn, on oath deposes and says:

1. That he is the appellee in the above-entitled action and makes this affidavit in support of his motion for leave to proceed in forma pauperis herein.

2. Affiant is unable because of his poverty to pay fees and costs of this case or give security therefor.

3. This is a Motion to Affirm Judgment, and the affiant believes that he is entitled to the relief therein sought.

Edwin D. Lee
Edwin D. Lee

Sworn and subscribed before me,

this 17th day of February, 1981.

Francis X. Caiazza
Notary Public

FRANCIS X. CAIAZZA, NOTARY PUBLIC
NEW CASTLE, LAWRENCE COUNTY
MY COMMISSION EXPIRES MAY 30, 1981
Member, Pennsylvania Association of Notaries

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No.

UNITED STATES OF AMERICA, APPELLANT

v.

EDWIN D. LEE

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM JUDGMENT

QUESTION PRESENTED

Whether Sections 3101, 3111 and 3301 of the Internal Revenue Code of 1954, which impose social security taxes on employers and employees, is constitutional as applied to persons who object, on religious grounds, both to the payment of such taxes levied to support public insurance benefits and to the receipt of such benefits.

CAIAZZA & LAMANCUSA
LAW OFFICES
SUITE 302
CENTRAL BUILDING
NEW CASTLE, PA. 16101

JURISDICTION

The judgment order of the district court was entered on July 15, 1980 (App. B, infra 9a). A notice of appeal to this Court was filed on August 14, 1980 (App. C., infra, 10a). The jurisdiction of this Court rests on 28 U.S.C. 1252, which authorized a direct appeal to this Court from a final judgment of a court of the United States holding an Act of Congress unconstitutional in a civil action to which the United States is a party. A direct appeal lies where, as here, a statute is held unconstitutional as applied to particular circumstances. Fleming v. Rhodes, 331 U.S. 100 (1947); see United States v. Christian Echoes Ministry, Inc. 404 U.S. 561, 563 (1972); United States v. American Friends Service Committee, 419 U.S. 7 (1974).

STATUTES INVOLVED

Sections 1402(g), 3101, 3102, 3111 and 3301 of the Internal Revenue Code of 1954 (26 U.S.C.), are set forth in App. D, infra, 11a-15a.

STATEMENT

The Appellee, Edwin D. Lee, is a member of the Old Order Amish, which is a bona fide religious order recognized as such by both the United States Government and the Internal Revenue Service. The United States of America sought to collect certain taxes from him which represents Social Security Taxes which the Appellee failed to withhold from the pay of other members of the Old Order Amish, whom he employed.

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Mr. Lee paid a portion of the taxes due which were identified as F.I.C.A. taxes. On January 18, 1979 the Appellee filed a claim for a refund, and by letter dated March 15, 1979, the claim for adjustment was fully disallowed, in that under Section 6201 and Section 6205 of the Internal Revenue Code, the Appellee was deemed liable for the tax.

ARGUMENT

The Appellee, Edwin D. Lee, is a member of the Old Order Amish Faith and community; a community which has been recognized by the United States Supreme Court as ". . . a highly successful social unit within our society" and one which ". . . reject(s) public welfare in any of its usual modern views" and "congress has recognized such groups as the Amish as exempt from the obligation to pay Social Security taxes". Wisconsin v. Yoder, 406 US 205 (1972).

The exemption under Title 26 USC (1402)h has taken a form which exempts only those members of Old Order Amish who are self-employed. Thus, under this Act, a member of the Old Order Amish faith who employs other members of the Old Order Amish must still collect and pay into the Social Security fund on behalf of his employees.

The government has stipulated that the Appellee is a member of the Old Order Amish who failed to withhold Social Security taxes from his employees, all of which were also Old Order Amish members. The government also stipulates to the fact that the Amish

CAIAZZA & LAMANCUSA
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SUITE 302
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religion prohibits payment into any insurance programs and that members of this sect makes provision for its dependent members.

In addition to these and other stipulated facts, it is uncontested by the government that the members of the Old Order Amish consider it a sin against God to pay money into the Social Security system, either directly through their employer or by themselves and that employers who are Old Order Amish consider it a sin to withhold Social Security taxes from the pay of employees who are members of the Old Order Amsih.

Thus, because of these stipulations and uncontested facts the primary issue of the instant case becomes whether the requirement that Edwin Lee, an Old Order Amish employer, pay into the Social Security program when it is in direct conflict with the precepts of his religion, is a violation of the freedom of religion clause of the First Amendment of the United States Constitution.

LEGISLATIVE HISTORY

A review of the legislative history (U.S.C. Congressional and Administrative News, 1965) shows that an exemption is made for those self-employed members of a bona fide religious group opposed to the acceptance of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for medical care, including the benefits of any insurance system established by the Social Security Act.

The express purpose of the Act is to provide relief for

CAIAZZA & LANCUSA
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those individuals who sincerely believe that payment of Social Security taxes is irreconcilable with their religious conviction.

The writers also cautioned that any broadening could well lead to widespread individual voluntary coverage under Social Security which would undermine the soundness of the Social Security program. This caution is clearly not appropriate in a situation where, as here, the small group of people comprising the Old Order Amish have been consistent in their refusal to accept any benefits from the Social Security program nor any other insurance program. In fact, the Appellant has stipulated to the fact that no Amish employee, for whom assessment against Mr. Lee has been placed, has ever accepted any Social Security benefits. Thus, inclusion of the catagories in this case within the exemption would not be contrary to the intent of the legislation and would, in fact, enhance its purpose.

FREEDOM OF RELIGION

The Appellee's religious beliefs prevent him from paying Social Security taxes. Payment of Social Security taxes or into any insurance fund is regarded as a sin and contrary to one of the very basic tenets of the Old Order Amish Faith, for they believe as the Bible says, "But if any provide not. . .for those of his own house, he hath denied the faith, and is worse than an infidel." (I Timothy 5:8)

The Appellee is required as a member of the Old Order Amish to collect for and pay into the Social Security program on behalf of his employees, all of whom are Old Order Amish. This requirement is in direct conflict with the tenets of his religion and is forbidden

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by the free exercise clause of the First Amendment. The free exercise clause, like the establishment clause, withdraws from legislative power, state and federal, the exercise of any restraint on the free exercise of religion. School District of Abington Township, Pa. v. Schenpp, 83 S. Ct. 1566, 374 US 203, 10 L. Ed. 2d 844 (1963). In this highly sensitive area "it is basic that no showing merely of a rational relationship to some colorable state interest would suffice." Sheibert v. Verner, 374 US 398, S. Ct. 790, 10 L. Ed. 2d 965B (1963).

The requirement that demands that Appellee become both a tax collector for the Social Security program and to pay into the program must have a compelling state interest to justify it when the requirement is in direct conflict with his religion. Such a compelling interest cannot exist where an exemption has been granted for self-employed Old Order Amish, and, within the purpose of such exemption, the catagories of payors in the instant case would fit without destroying the caution included in the history of the Act. "Only the gravest abuses endangering paramount interest, give occasion for permissible limitation." Thomas v. Collins 323 US 516, 530. Under the facts of the instant case, no such abuse or danger appears as would justify the limitation on the practice of the Old Order Amish religion.

It must be emphasized that this is not a case in which Appellee or other members of his group are seeking a free ride in order, at some future date, to collect under the Social Security program after never having paid into it. But rather, the group of Old Order Amish as a whole have consistently rejected any claim to benefits under the program and have consistently provided for other members of their

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SUITE 302
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group as well as their extended family, thereby making the group self-sufficient.

The Old Order Amish and their beliefs and practices are worthy of preservation. The government should not discourage such practice by forcing members of this group to obey a law which is in direct conflict with a basic tenet of their religion. Diversity among the peoples of the United States is of unquestioned importance and such diversity must be preserved.

Without question, a major principle of the Amish religion is the responsibility of the Amish for its own members. Commercial insurance and governmental insurance programs, including the Federal Insurance Contribution Act, are contrary to this religious principle. The Appellant's interest in the social well-being of its citizens should not be free from a balancing process whenever it infringes upon other fundamental rights and interest, such as those specifically protected by the free exercise of religion clause of the First Amendment.

In order for the Appellants to force Mr. Lee to perform an act which he considers to be a sin and against his basic religious beliefs, it must appear either that the government does not deny the free exercise of religious beliefs by its requirement, or that there is a governmental interest of sufficient magnitude to override the interest claiming protection under the free exercise of religion clause. Wisconsin v. Yoder, 406 US 205, 32 L. Ed. 2d 15, 92 S. Ct. 1526.

Does the government deny Mr. Lee the free exercise of his religion by requiring him to pay into the Social Security system? We think so.

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There can be no question that by forcing Mr. Lee to pay money into the Social Security System is denying him the free exercise of his religion, since by paying into the system, he is, stated very simply, committing a sin. The Amish believe that there is only one pervasive set of values and differences which arise are considered heresies. These people have one system of values and whenever changes in the established tradition are threatened, they are looked upon as serious offenses by the entire sect. To them, it makes no difference whether you are an employer or employee. Consequently, in every part of their life, the prevailing beliefs and traditions are re-affirmed, including their belief against insurance. In their life also, a strict religious atmosphere prevails, which underlines these beliefs with a sense of compulsion which strikes deeply in the conscience of every Amishman. Some time ago, the government seized cows from a Pennsylvania Amishman who refused to pay the Old Age and Survivors Insurance Tax. If the tax was paid, the Amishman would have admitted that the government has a responsibility for aged Amish members, and to admit that is to deny their own responsibility, one of their main religious principles.

Next, is there a governmental interest of sufficient magnitude to override the interest claiming protection under the free exercise of religion clause? We think not.

The Amish believe that their faith is sufficient to meet their needs as they come. He shuns commercial forms of insurance, for, in his judgment, he already has the best kind of insurance. If a barn burns down, the neighbors are there to help him build a new one.

CAIAZZA & LANARCUSA
LAW OFFICES
SUITE 503
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If he beomes ill, they do his work. Should he die suddenly, they make arrangements to have the farm operation continue.

Amish mutual aid provides "Social Security" for its members from birth to death. Security comes from friendly personal relations. It is their belief that responsibility for mutual aid stems from father and mother, brother and sister, uncle and aunt, and church members, and not from impersonal and remote sources, such as investment bonds or state security. Consequently, mutual aid is practiced by the Amish as a religious belief.

It is important to note that the Amish do not object to paying income taxes; they do object to receiving government aid or having their children and grandchildren fall heir to such a temptation. Consequently, the need or interest which the government is attempting to meet has already been met by the Amish people. The Amishman who lives by his standards enjoys a secure and self-sufficient family and community life, without the aid of the Federal Government. No matter how strong the government's interest is in a mutual security system, it should not be contrary to the religious beliefs of the Amish people as it affects them as a group.

In Wisconsin v. Yoder, supra, at page 215, the Supreme Court of the United States said:

> . . . . In evaluating those claims (that compulsory school-attendance statute beyond the 8th grade was in violation of the Freedom of Religion clause of the First Amendment) we must be careful to determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependant.

Again, in Yoder, supra, the history of the Amish sect

CAIAZZA & LAMANCUSA
LAW OFFICES
SUITE 302
CENTRAL BUILDING
NEW CASTLE, PA. 16101

was explained in great detail, beginning with the Swiss Anabaptists, as stated on page 210 of Yoder:

> . . . . they (Swiss Anabaptists) sought to return to the early simple, christian life, de-emphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith.

By considering the stipulations entered into by the parties, it is apparent that the Amish do not support the traditional norms of our society, such as insurance, and that their objection is not a matter of personal preference, but rooted in deep religious conviction. They have held loudly and firmly to St. Paul's edect "be not conformed to this world. . ." Their life is simple, their belief is simple, their total existance, from days beginning to days end is guided by their desire for the salvation of their soul, and their total existence is directed toward that end.

Laws which threaten their interdependence also threaten their religious beliefs and their continued existence as a religious society. Their belief of mutual aid is not based upon economic principles, personal individual beliefs, or even their desire not to conform to majority standards. Simply, their belief is based upon a major principle of the Amish religion--that is, his own responsibility for his own brother, firmly intrenched within a people which follows the practice of making provisions for its dependent members.

In sum, the personal impact of forcing an Amishman to

CAIAZZA & LAMANCUSA
LAW OFFICES
SUITE 302
CENTRAL BUILDING
NEW CASTLE, PA. 16101

pay money into a system which provides governmental benefits is to admit that the government has a responsibility for aged Amish members and to admit this is to deny their own responsibility.

The present state of the law as it relates to Amish employers and employees is also very interesting.[1]

In Yoder, supra, at page 222, the Supreme Court of the United States said:

> ". . . . the Amish community has been highly successful social unit within our society, even if apart from the conventional ("mainstream"). Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms. The Congress itself recognized their self-sufficiency by authorizing exemption of such groups as the Amish from the obligation to pay social security taxes."

The quote taken from Yoder, supra, is not altogether correct in substance. Congress has exempted Amishman who are self-employed by virtue of 26 USC 1402(h). No exemption exists for Amishman who are employees. However, the important aspect of the law is that Congress has recognized the fact that an individual can object and be conscientiously opposed to the payment (emphasis added) of a tax, which objection is bottomed upon a religious belief. It is interesting to note that the history of the exemption shows it became law because of the beliefs of the Old Order Amish. HR Rep. No. 213, 89th Cong. 1st Sess., 101-102 (1965).

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[1] 26 USC 1402(h) Exemption--Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).

CAIAZZA & LAMANCUSA
LAW OFFICES
SUITE 302
CENTRAL BUILDING
NEW CASTLE, PA. 16101

CONCLUSION

The Amish alternative to Social Security has worked well within their system. Consequently, they are capable of fulfilling the needs of their people. Their mutual care and assistance to one another is strongly rooted within their religious belief, and is not philosophical or economical in nature. It is part of their religion. Again, their objection is rooted strongly in their belief that Social Security is insurance. To become part of that program, directly or indirectly, exhibits mistrust in the providence of God and His care to meet their future needs.

Respectfully submitted,

CAIAZZA & LAMANCUSA

By Francis X. Caiazza, Esq

Francis X. Caiazza, Esquire
302 Central Building
New Castle, PA 16101
Telephone (412) 658-3758
Attorney for Appellee

CAIAZZA & LAMANCUSA
LAW OFFICES
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v.

EDWIN D. LEE

AFFIDAVIT OF SERVICE

STATE OF PENNSYLVANIA :
: SS
COUNTY OF LAWRENCE :

I, Francis X. Caiazza, Esquire, depose and say that I am the attorney of record for the above appellee and that I served a copy of the Motion for Leave to Proceed in Forma Pauperis and Affidavit attached thereto, as well as the Motion to Affirm Judgment, as follows: on Wade H. McCree, Jr., Solicitor General of the United States, by mailing copies in a duly addressed envelope, with first-class postage pre-paid at his office as follows:

Office of the Solicitor General
Department of Justice
Washington, D.C. 20530

Francis X. Caiazza, Esq.
Francis X. Caiazza, Esquire

Sworn and subscribed before me
this 17th day of February, 1981.

Beverly A. Leckfor
Notary Public

My Commission Expires:

BEVERLY A. LECKFOR, Notary Public
New Castle, Lawrence Co.
My Commission Expires April 16, 1984

CAIAZZA & LANANCUSA
LAW OFFICES
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NEW CASTLE, PA. 16101